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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JEFFREY O. JOYNER, Plaintiff and Appellant, v. WWW.SOCALSOCCERTALK.COM et al., Defendants and Respondents.	G037181 (Super. Ct. No. 05CC10627) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John M. Watson and Dennis S. Choate, Judges. Reversed.

Law Offices of Lenore Albert and Lenore L. Albert for Plaintiff and Appellant.

Ford, Walker, Haggerty & Behar, Timothy L. Walker, Stanley L. Scarlett, Maxine J. Lebowitz and Jay D. Brown for Defendants and Respondents www.socalsoccertalk.com and Jerry Lazzareschi.

Preston Gates & Ellis, Raymond E. Loughrey and Melissa A. Wurster for Defendant and Respondent Domains by Proxy, Inc.

* * *

Plaintiff Jeffrey O. Joyner appeals from a judgment entered after the trial court granted a special motion to strike brought by defendants www.socalsoccertalk.com (Soccertalk), Jerry Lazzareschi, and Domains by Proxy, Inc. (Domains) under the anti-SLAPP statute.[1] (Code Civ. Proc., § 425.16.)[2] Joyner contends the trial court erred in granting defendants' anti-SLAPP motion because defendants failed to show the defamatory postings concerned a matter of public interest, and the trial court previously had granted Joyner's preliminary injunction request, which required the court to find Joyner had demonstrated a probability of success on the merits. Joyner further contends the trial court awarded excessive attorney fees to defendants and erred in dismissing the entire complaint, issuing discovery sanctions, and ordering postjudgment examinations.

Although the alleged defamatory statements were made in a public forum, they were not made "in connection with an issue of public interest." (See § 425.16, subd. (e)(3).) Accordingly, we conclude the complaint does not fall within the anti-SLAPP statute and reverse.

I

FACTUAL AND PROCEDURAL BACKGROUND

In September 2004, Lazzareschi started the Soccertalk website, a bulletin board service providing chat rooms regarding local soccer issues. Lazzareschi used Domains as a proxy administrator and registrant of the Soccertalk website. Joyner is a professional soccer coach. In 2004, Joyner initially coached a teenage girls soccer team, "FRAM," and later merged some FRAM members into his new team, "Infinity."

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[1] SLAPP is acronym for strategic lawsuit against public participation, first coined by two University of Denver professors. (See Comment, *Strategic Lawsuits Against Public Participation: An Analysis of the Solutions* (1990/1991) 27 Cal. Western L.Rev. 399.)

[2] All further statutory references are to the Code of Civil Procedure.

Beginning in December 2004, certain unknown persons, some of whom are believed to be parents of teenage soccer players Joyner had coached, engaged in a protracted discussion and debate about Joyner's actions concerning the FRAM and Infinity soccer teams, generating about 2,000 posts on the Soccertalk bulletin board. According to Joyner's complaint, some of these statements falsely accused Joyner of "'financial improprieties' (stealing team funds)," described him as "'a cheater and a thief,'" and asserted he intentionally ran the FRAM team "'into the ground.'" Soccertalk then republished the defamatory posts on competing websites to draw users to Soccertalk. As a result of these postings, numerous parents and members of the soccer community spurned Joyner.

At various times during 2005, Joyner demanded in writing that defendants remove the defamatory statements from the Soccertalk website. Despite these warnings, none of the postings were removed, and additional defamatory statements surfaced on the website. These defamatory postings were viewed over 84,000 times.

In his first amended complaint, Joyner sued defendants for (1) negligence; (2) negligent training/supervision; (3) defamation; (4) interference with contractual relations; (5) interference with prospective economic advantage; (6) intentional infliction of emotional distress; and (7) fraud/deceit. Defendants filed a special motion to strike under the anti-SLAPP statute, which the trial court granted. The trial court also awarded defendants attorney fees on the anti-SLAPP motion and awarded Domains sanctions against Joyner for discovery abuse. The trial court entered judgment in favor of defendants, and dismissed Joyner's first amended complaint with prejudice. After entry of judgment, the trial court issued orders for examination of Joyner and his attorney.

II

STANDARD OF REVIEW

An order denying an anti-SLAPP special motion to strike is appealable under sections 425.16, subdivision (i), and 904.1. We review the order de novo. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.) We review the trial court's order awarding attorney fees to the prevailing parties for abuse of discretion. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1426.)

III

DISCUSSION

A. *The Defamatory Statements Occurred in a Public Forum, but Not in Connection with an Issue of Public Interest*

The anti-SLAPP statute provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) To prevail on an anti-SLAPP motion, the movant must first make "'a threshold showing that the challenged cause of action' arises from an act in furtherance of the right of petition or free speech in connection with a public issue." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192 (*Varian*).) Once the movant meets this burden, the plaintiff must demonstrate "'a probability of prevailing on the claim.'" (*Ibid.*) The court must strike the cause of action if the plaintiff fails to meet this burden. (*Ibid.*)

The statute defines "'act in furtherance of a person's right of petition or free speech . . . in connection with a public issue'" as including "any written or oral statement

or writing made in . . . a public forum in connection with an issue of public interest . . . ." (§ 425.16, subd. (e)(3).) When interpreting this provision, we keep in mind the Legislature has declared the anti-SLAPP statute "shall be construed broadly." (§ 425.16, subd. (a).)

Joyner concedes the Soccertalk message board is a public forum for purposes of the anti-SLAPP statute. (See *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1247; *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 894.) Joyner contends, however, defendants failed to meet their burden of demonstrating the defamatory postings were made in connection an issue of public interest. Joyner notes he affected only a limited number of people in coaching two soccer teams and argues the number of persons affected do not approach those required to satisfy the "public interest" requirement of the anti-SLAPP statute.

"The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. [Citations.] '"[M]atters of public interest . . . include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals."' [Citation.]" (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479 (*Damon*).) In *Damon*, a former homeowners association manager brought a defamation action against several members, directors, and a private club after they criticized his management of the association and urged his replacement by a professional management company. Affirming the trial court's order granting of the defendants' anti-SLAPP motion, *Damon* explained: "[E]ach of the alleged defamatory statements concerned (1) the decision whether to continue to be self-governed or to switch to a professional management company; and/or (2) [the plaintiff]'s competency to manage the Association. These statements pertained to issues of public interest within the Ocean Hills community.

Indeed, they concerned the very manner in which the group of more than 3,000 individuals would be governed — an inherently political question of vital importance to each individual and to the community as a whole. [Citation.] Moreover, the statements were made in connection with the Board elections and recall campaigns." (*Id.* at p. 479.) Although the statements concerned a private organization, the court noted that for many in the state, "'the homeowners association functions as a second municipal government . . . .' [Citation.]" (*Ibid.*)

We reached a similar conclusion in *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1468 (*Ruiz*). There, a homeowner sued his homeowners association alleging letters written by its attorneys defamed him. The letters concerned a dispute over the association's rejection of the homeowner's building plans, and the homeowner's requests for documents and information. We concluded the letters fell within the anti-SLAPP statute, noting, (a) the letters formed part of a debate concerning an ongoing dispute, and (b) the dispute was of interest to a definable portion of the public, i.e., residents of 523 lots, because they would be impacted by the outcome. (*Id.* at pp. 1468-1469.)

In contrast, an allegedly defamatory statement made on a website was held not to concern an issue of public interest in *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107. There, a local union was placed in receivership, and the trustee posted a message on the union website that the assistant business manager had been fired for financial mismanagement. The fired employee sued the union and trustee for defamation, and the defendants filed an anti-SLAPP motion. The *Du Charme* court considered the website a public forum, but nonetheless concluded defendants failed to make a prima facie showing the defendants made the statement in connection with a public issue or an issue of public interest. Recognizing that matters of interest to union members might not interest the general public, the court formulated the following rule: "[I]n order to satisfy the public issue/issue of public interest requirement

of section 425.16, subdivision (e)(3) and (4) of the anti-SLAPP statute, in cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging *participation* in matters of public significance." (*Id.* at p. 119.) The court noted that the single posting on the website regarding the assistant business manager's termination concerned an isolated statement "unconnected to any discussion, debate or controversy" then existing, and observed: "[the manager's] termination was a fait accompli; its propriety was no longer at issue. Members of the local were not being urged to take any position on the matter. In fact, *no* action on their part was called for or contemplated. To grant protection to mere informational statements, in this context, would in no way further the statute's purpose of encouraging *participation* in matters of public significance [citation]." (*Id.* at p. 118.)

Here, the defamatory postings did not concern the public at large, but involved at most a limited, definable portion of the public — the approximately 600 Soccertalk members interested in local soccer issues. The controversy regarding Joyner's merger of two soccer teams that triggered the defamatory statements, however, affected a much smaller group of people, i.e., members of the two soccer teams and their families. Unlike the homeowner associations in *Damon* and *Ruiz,* Joyner's coaching decisions did not "affect[] a community in a manner similar to that of a governmental entity [or involve] [citations] '". . . a large, powerful organization [that] may impact the lives of many individuals."' [Citation.]" (*Damon, supra,* 85 Cal.App.4th at p. 479; see *Ruiz, supra,* 134 Cal.App.4th at p. 1468 [public interest found because homeowners "would be affected by the outcome of [the] disputes and would have a stake in [the homeowners association] governance"].) As in *Du Charme,* no action on the part of the Soccertalk members was called for or contemplated, and granting anti-SLAPP protection in this

situation "would in no way further the statute's purpose of encouraging *participation* in matters of public significance [citation]." (See *Du Charme, supra,* 110 Cal.App.4th at p. 118, original italics.)

True, the present situation is distinguishable from *Du Charme* in that the challenged postings were not isolated, but part of an ongoing discussion that continued unabated from the time of the merger until Joyner filed suit, generating over 2,000 postings that had been viewed over 84,000 times. But "'public interest' does not equate with mere curiosity." (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132.) Moreover, "[a] person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." (*Id.* at p. 1133.) To be a matter of public interest, the issue must have public *significance*.

To demonstrate significance, Domains contends that some of the allegedly defamatory postings concerned "the general possibility of inappropriate sexual interaction between coaches and players." Arguing this topic is always a matter of public interest, Domains cites *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1547, which observed: "The issue as to whether or not an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest. The public interest is society's interest in protecting minors from predators, particularly in places such as church programs that are supposed to be safe. It need not be proved that a particular adult is in actuality a sexual predator in order for the matter to be a legitimate subject of discussion." (See also *M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 629.) Although we generally agree with this proposition, Joyner is not suing over any statements involving an alleged sexual relationship between he and his players, but over comments made about his alleged financial improprieties and coaching decisions. These general comments did not implicate Joyner in any sexual improprieties, and thus cannot convert a discussion of private concern to a matter of public significance.

Accordingly, we conclude defendants have failed to meet their burden of showing Joyner's claims arise out of an activity falling within the protection of the anti-SLAPP statute. Our conclusion that the present suit does not fall within the anti-SLAPP statute should not be interpreted as a comment on the merits of Joyner's suit. We note that if defendants are immune from suit under the federal Communications Decency Act (CDA), title 47 United States Code section 230, as interpreted by the recent case of *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, they may seek relief by other procedural means, such as demurrer or summary judgment.

B. *The Trial Court Did Not Abuse Its Discretion in Awarding Discovery Sanctions*

Concurrent with the hearing on defendants' anti-SLAPP motion, the trial court heard Domains' motion for sanctions relating to Joyner's attempt to enforce a subpoena against it. The trial court granted the sanctions motion, awarding Domains sanctions of $1,961.30.

Joyner contends the trial court erred in awarding Domains discovery sanctions because it had no jurisdiction at the time it issued the award. Joyner cites *Varian, supra,* 35 Cal.4th 180, to support his argument that a trial court loses jurisdiction immediately upon granting an anti-SLAPP motion. *Varian*, however, held only that the *perfecting of an appeal* from an order denying an anti-SLAPP motion invoked the automatic stay of section 916, subdivision (a).[3] Here, the trial court entered its sanctions order on May 18, 2006, and Joyner filed his notice of appeal on June 7, 2006. Accordingly, the trial court had jurisdiction to enter the sanctions order.

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[3] Section 916, subdivision (a), provides: "Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order."

Joyner also challenges the imposition of sanctions because he simply attempted to determine the identities of the fictitiously named defendants. Defendants based their sanctions request not on what the subpoena sought, but because Joyner served the subpoena in violation of the discovery stay required under section 2025.210, subdivision (b),[4] and failed to meet and confer before filing his motion to compel compliance, as mandated by section 2025.450, subdivision (b)(2). Joyner does not address these issues in his briefs. Accordingly, we affirm the trial court's sanctions order.[5]

C. *Joyner Did Not Appeal the Postjudgment Examination Orders*

Shortly after the trial court entered judgment, it issued examination orders against Joyner and his attorney. Joyner contends his appeal divested the trial court of jurisdiction to issue the orders. Joyner requested our review of the orders by writ of supersedeas, which we denied by separate order. Joyner, however, never appealed from the examination orders, and we therefore lack jurisdiction to consider the matter. We note, however, that in light of our reversal of the court's anti-SLAPP order, the legal basis for these orders no longer exists.

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[4] Section 2025.210, subdivision (b), provides: "The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. On motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date."

[5] We note the discovery sanctions were unrelated to the trial court's order granting defendants' anti-SLAPP motion. Thus, our reversal of the judgment based on that order does not moot the sanctions issue.

IV

DISPOSITION

The judgment is reversed. Joyner is entitled to his costs of this appeal.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.